



EMPLOYMENT TRIBUNALS

Claimant

Mr Hitesh Kumar Lakkad

Respondent

- v 1. S & H Wholesale & Distribution t/a Max Distribution Ent Ltd
2. Best Buy Enterprise Ltd
3. Xpress UK Wholesale Ltd
4. Emregas Wholesalers Ltd t/a Embon Cash & Carry
5. D D C Foods Ltd

RECORD OF A PRELIMINARY HEARING

Heard at:
Before:

Watford (in public)
Employment Judge Alliott (sitting alone)

On: 20 June 2023

Appearances:

For the Claimant: In person
For the First Respondent: Mr M Siraj (Director)
For the Second Respondent: Mr A Jain (Manager)
For the Third Respondent: Did not attend
For the Fourth Respondent: Mr I Hurst (solicitor)
For the Fifth Respondent: Did not attend

JUDGMENT

The judgment of the tribunal is that:

1. The claims against the Second, Third, Fourth and Fifth Respondents are struck out as they are out of time and it was reasonably practicable to bring them in time and/or it is not just and equitable to extend time.

REASONS

1. This public preliminary hearing was ordered by Employment Judge Lewis on 21 February 2023 to determine the following issue:

“Whether the claims should be struck out because they have no reasonable prospect of success.”

2. In purported compliance with a case management order requiring the claimant to provide details of his claims made on 5 March 2023, the claimant sent an email to the employment tribunal on 17 March 2023. Whilst this is in very general terms and includes parties who are not parties to this case, the claimant has clarified the dates of his alleged employment with the Second, Third, Fourth and Fifth Respondents. These are as follows:-
 - 2.1 With the Fifth Respondent: From 1 January 2020 until 31 July 2020.
 - 2.2 With the Third Respondent: From 1 August 2020 until 31 January 2021.
 - 2.3 With the Fourth Respondent: From 1 February 2021 until 30 June 2021.
 - 2.4 With the Second Respondent: From June 2021 for four or five months (claimant) or until August 2021 (Second Respondent).
3. The claimant presented his claim on 20 July 2022. The Acas certificates covered the period from 3 to 5 July. Consequently any acts or omissions prior to 4 April 2022 are out of time.
4. The claimant gave evidence on oath. The claimant told me that after ceasing to provide work for the Second, Third, Fourth and Fifth Respondents he had no further contact with them thereafter. Consequently, I find that all allegations made against the Second, Third, Fourth and Fifth Respondents are out of time.
5. The claimant's claims are out of time as follows:-
 - 5.1 Against the Second Respondent by 4-7 months.
 - 5.2 Against the Fourth Respondent by 9 months.
 - 5.3 Against the Third Respondent by 1 year and 2 months.
 - 5.4 Against the Fifth Respondent by 1 year and 8 months.
6. The claimant complains of a failure to pay him commission which, were he to be an employee, would be an unauthorised deduction of pay/breach of contract claims. He also brings complaints of age and/or religion and belief and/or race discrimination. As such, I need to consider whether it was reasonably practicable for the claimant to bring his unauthorised deduction of wages/breach of contract claim in time and, if not, whether it has been brought within a reasonable time thereafter. As regards the discrimination claims I need to consider whether his claims have been brought within such other period as I think just and equitable.
7. The onus on establishing that it was not reasonably practicable and/or that it would be just and equitable to extend time rests on the claimant.
8. In the exercise of my discretion I have to take into account all the circumstances.

9. The length of the delay is significant in the context of employment tribunals being at least four months at its least and one year and eight months at its maximum.
10. The claimant in essence said to me that he did not know where to go for justice. He told me that friends had advised him to go and see a solicitor but that he had no money, was struggling and so could not hire a solicitor. Significantly, the claimant told me that he brought his claim having researched how to bring a claim online. He said this was in around June 2022 and that was why he had only launched his claim in July 2022.
11. A significant factor in the claimant's complaints is that he was not paid the correct amounts of commission. In my judgment, not being paid the correct amount is something that virtually everyone picks up at the time of payment and would prompt a desire to claim any shortfall. Similarly, in my judgment everyone in the workplace is aware of legislation that prospects them against discrimination on, at least, the grounds of race. The claimant clearly had a capacity to research the law and bringing a claim online because this is what he did. In my judgment, I find that the claimed ignorance of his rights generally and of any time limits specifically until June 2022 is unreasonable. In my judgment he could and should have begun his research earlier back in 2020 and, had he done so, he would have been able to present his claims in time. The claimant was not ignorant of any crucial facts.
12. Consequently, I find that it was reasonably practicable for the claimant to present his claims in time and that the claimant did not present his claims in such other period as I consider just and equitable.
13. Consequently I strike out the claims against the Second, Third, Fourth and Fifth Respondents.

Costs

14. At the conclusion of the hearing Mr Hurst, on behalf of the Fourth Respondent, Applied for his costs. On 16 March 2023 he had written to the claimant making the point that the claimants claim against the Fourth Respondent were nine months out of time, asserting that the claim was scandalous or vexatious or had no reasonable prospect of success and warning the claimant that such a costs order would be made.
15. I take as my starting point that the normal expectation is that costs will not be awarded against the losing party in the employment tribunal. Nevertheless, I have a discretion to consider whether to make a costs order if I consider that a party has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of proceedings (or part) or the way that the proceedings (or part) have been conducted (Rule 76 Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013).
16. Obviously enough the claimant has brought his claim nine months out of time as regards the Fourth Respondent. However, it is always open to a claimant to present reasons why his claim is out of time and seek to persuade an Employment Judge why time should be extended, and the claim can proceed.

That is what the claimant in effect has done in this case. I do not conclude that his conduct was unreasonable. Consequently, I decline to make a costs order.

Employment Judge Alliott

Date: 21 July 2023

Sent to the parties on:

26 July 2023

For the Tribunal: